

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of
Sijtze VAN DEER MEER; et al.

Atty. Docket
2003P02958WOUS

Confirmation No. 9220

Serial No. 10/584,377

Group Art Unit: 3742

Filed: June 22, 2006

Examiner: WASAFF, John S.

Title: LIQUID CARTRIDGE FOR USE IN A BEVERAGE SYSTEM

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APPEAL BRIEF

Sir:

Appellants herewith respectfully present a Brief on Appeal as follows, having filed a
Notice of Appeal on December 16, 2011.

REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee of record Koninklijke Philips Electronics N.V., a corporation of The Netherlands having an office and a place of business at Groenewoudseweg 1, Eindhoven, Netherlands 5621 BA.

RELATED APPEALS AND INTERFERENCES

Appellants and the undersigned attorney are not aware of any other appeals or interferences which will directly affect or be directly affected by or having a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-2, 4-16 and 19-28 are pending in this application, where claims 3 and 17-18 are canceled. Claims 1-2, 4-16 and 19-28 are rejected in the Final Office Action mailed October 13, 2011. This rejection was upheld in an Advisory Action that mailed December 15, 2011. Claims 1-2, 4-16 and 19-28 are the subject of this appeal.

STATUS OF AMENDMENTS

Appellants filed on December 1, 2011, an after-final amendment in response to a Final Office Action mailed October 13, 2011. The after-final amendment of December 1, 2011 included a minor amendment to claim 20, changing "form" to --from--. In an Advisory Action mailed on December 15, 2011, it is not indicated whether the after final amendment filed on December 1, 2011 will be entered. It is presumed that the after final amendment of December 1, 2011 is not entered. Further, the Advisory Action of December 15, 2011 indicated that the after-final amendment of December 1, 2011 does not place the application in condition for allowance. This Appeal Brief is in response to the Final Office Action mailed October 13, 2011, that finally rejected claims 1-2, 4-16 and 19-28, which remain finally rejected in the Advisory Action that mailed December 15, 2011.

SUMMARY OF THE CLAIMED SUBJECT MATTER

The present invention, for example, as recited in independent claim 1 and shown in FIGs 1-3, and described on page 4, line 13 to page 6, line 24 of the specification, is directed to a device for preparing a heated liquid using a beverage-making appliance 15. As shown in FIGs 1-2c and 3, and described on page 4, lines 13-33 of the specification, the device comprises a reservoir 11 that sealably holds a liquid in a sealed foil 4; a chamber 26; a liquid transport channel 25 in communication with the reservoir 11 for transporting the liquid when the reservoir 11 is unsealed to the chamber 26; and a steam inlet 116 which is connectable to a steam generator 32 of the beverage-making appliance 15 for generating steam and heating the liquid flowing out of the liquid transport channel 25 to form the heated liquid. As shown in FIGs 1 and 2d, and described on page 4, line 21 to page 6, line 24, the device further comprises a liquid outlet 29 for outputting the heated liquid; a guide, such as including a further chamber 28 and a restriction 27, is configured to transport a combined flow of at least the liquid and the steam to the liquid outlet 29; and a cartridge 100 in which the reservoir 11, the chamber 26, the liquid transport channel 25, the guide, and the liquid outlet 29 are provided, where the cartridge 100 is detachably connected to the device beverage-making appliance 15 and the cartridge 100 is disposable after the sealed foil 4 is unsealed.

The present invention, for example, as recited in independent claim 22 and shown in FIGs 1-3, and described on page 4, line 13 to page 6, line 24 of the specification, is directed to a cartridge 100 for preparing a heated liquid using a beverage-making appliance 15,. As shown in FIGs 1-2c and 3, and described on page 4, lines 13-33 of the specification, the cartridge 100 comprises a reservoir 11 that sealably holds a liquid in a sealed foil 4; a compartment 26; a channel 25 between the reservoir 11 and the compartment 26; a steam inlet 16 which is connectable to a steam generator 32 of the beverage-making appliance 15 for providing steam into the compartment 26 for heating the liquid provided into the compartment 26 to form the heated liquid. As shown in FIGs 1 and 2d, and described on page 4, line 21 to page 6, line 24, the device further comprises a liquid outlet 29 for outputting the heated liquid, where the cartridge 100 is detachable from the beverage-making appliance 15 and the cartridge is disposable after the sealed foil 4 is unsealed.

The present invention, for example, as recited in claim 27 and shown in FIGs 1-3, and page 6, lines 4-24 and page 9, lines 19-23 of the specification, is directed to a device where the liquid outlet 29 of the cartridge 100 outputs the heated liquid directly into a cup 37 so that the liquid present in the reservoir 11 does not come into contact with the beverage-making appliance 15.

The present invention, for example, as recited in claim 28 and shown in FIGs 1-3, and page 6, lines 4-24 and page 9, lines 19-23 of the specification, is directed to a cartridge 100 where the liquid outlet 29 outputs the heated liquid directly into a cup 37 so that the liquid present in the reservoir 11 does not come into contact with the beverage-making appliance 15.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-2, 4-9, 11-12, 14-16 and 19-26 of U.S. Patent Application Serial No. 10/584,377 are unpatentable under 35 U.S.C. §103(a) over U.S. Patent No. 6,289,796 (Fung) in view of U.S. Patent No. 5,427,719 (Favre).

Whether claim 10 of U.S. Patent Application Serial No. 10/584,377 is unpatentable under 35 U.S.C. §103(a) over Fung and Favre in view of U.S. Patent No. 5,862,740 (Gross).

Whether claim 13 of U.S. Patent Application Serial No. 10/584,377 is unpatentable under 35 U.S.C. §103(a) over Fung and Favre in view of U.S. Patent No. 5,473,972 (Rizzuto).

ARGUMENT

Claims 1-2, 4-9, 11-12, 14-16 and 19-26 are said to be unpatentable over Fung in view of Favre.

Appellants respectfully request the Board to address the patentability of independent claims 1 and 22 as well as dependent claims 27 and 28, and further claims 2, 4-16, 19-21 and 23-26 as depending from independent claims 1 and 22, based on the requirements of independent claims 1 and 22. This position is provided for the specific and stated purpose of simplifying the current issues on appeal. However, Appellants herein specifically reserve the right to argue and address the patentability of claims 2, 4-16, 19-21 and 23-28 at a later date should the separately patentable subject matter of claims 2, 4-16, 19-21 and 23-28 later become an issue. Accordingly, this limitation of the subject matter presented for appeal herein, specifically limited to discussions of the patentability of independent claims 1 and 22 is not intended as a waiver of Appellants' right to argue the patentability of the further claims and claim elements at that later time.

At the outset it should be noted that while on page 2 of the Final Office Action, it is indicated that claims 1-2, 4-9, 11-12, 14-16 and 19-26 are rejected, the body of the rejection also includes a rejection of claims 27-28, namely, on page 6, first paragraph of the Final Office Action.

Fung is directed to a hot milk dispenser that supplies either frothed milk or non-

frothed milk based on the position of a knob 14 that selects either a first nozzle 17 for providing frothed milk (FIG 3), or a second nozzle 18 for providing non-frothed milk (FIG 4). The Fung hot milk dispenser is a unitary device where no parts appear to be detachably connected to the dispenser. Even if some parts are detachably connected to the dispenser, there is still no disclosure or suggestion of a cartridge that includes the following five elements: (1) a reservoir, (2) chamber or compartment, (3) a liquid transport channel, (4) a guide, and (5) liquid outlet, where such a cartridge that includes these five elements is detachably connected to the dispenser. Even assuming, arguendo, that a detachable cartridge is somehow disclosed or suggested in Fung, as correctly noted in the paragraph spanning pages 2-3 of the Final Office Action, there is no disclosure or suggestion in Fung of "a reservoir that sealably holds a liquid in a sealed foil," as recited in independent claims 1 and 22. (Illustrative emphasis provided) Favre is cited in an attempt to remedy the deficiencies in Fung.

Favre is directed to an apparatus for making a beverage that includes sealed cartridge 1 with coffee grounds. Favre is completely silent and does not disclose or suggest any reservoir that sealably holds a liquid in a sealed foil.

It is respectfully submitted that Fung, Favre, and combination thereof, do not disclose or suggest the present invention as recited in independent claim 1, and similarly recited in independent claim 22 which, amongst other patentable elements, recites (illustrative emphasis provided):

a reservoir that sealably holds a liquid in a sealed foil;
a chamber; ...
a cartridge in which the reservoir, the chamber, the liquid
transport channel, the guide, and the liquid outlet are provided, wherein
the cartridge is detachably connected to the device beverage-making
appliance and the cartridge is disposable after the sealed foil is unsealed.

A detachable cartridge reservoir that sealably holds a liquid in a sealed foil, where
the detachable cartridge includes a reservoir, a chamber or compartment, a channel
between the sealed reservoir and the chamber or compartment, a guide, and a liquid outlet
is nowhere disclosed or suggested in Fung and Favre, alone or in combination. At best the
combination of Fung and Favre merely discloses a beverage making device with integral
channels and chambers, and a detachable sealed cartridge which is nothing more than a
mere sealed container without any further chambers, guides or channels, where such a
detachable sealed cartridge only holds a coffee grounds in a sealed foil. Any reservoir
that holds a liquid does not include any sealed foil for holding the liquid.

In the Advisory Action, it is alleged that Favre is used "to demonstrate the use of a
sealing foil. Regarding the particular substance contained, it is examiner's position that
such a limitation carries little patentable weight." This allegation is respectfully traversed.
In particular, a cartridge for sealingly holding coffee grounds is substantially different from
a cartridge for sealingly holding a liquid with different construction and considerations, such
as having a chamber and a liquid transport channel in addition to a reservoir that sealably
holds a liquid. A cartridge for sealingly holding coffee grounds in a reservoir does not
need a further chamber and a liquid transport channel for transporting the coffee grounds

from the reservoir to a further chamber, and such a detachable cartridge that includes both a reservoir and a chamber connected together by a channel, all in the very same detachable cartridge, is nowhere disclosed or suggested in Fung, Favre, and combination thereof.

Accordingly, it is respectfully requested that independent claims 1 and 22 be allowed. In addition, it is respectfully submitted that claims 2, 4-9, 11-12, 14-16, 19-21 and 23-26 should also be allowed at least based on their dependence from independent claims 1 and 22, as well as their individually patentable elements.

Further, it is alleged on page 6, first paragraph of the Final Office Action, in rejecting claims 27 and 28 that "Fung shows the liquid outlet of the cartridge outputs the heated liquid directly into a cup so that the liquid present in the reservoir does not come into contact with the beverage-making appliance (heated liquid capable of entering cup; Fig. 1)." (Emphasis added) This allegation is respectfully traversed.

In particular, Fung, Favre, and combination thereof do not disclose or suggest that "the liquid outlet of the [detachable] cartridge outputs the heated liquid directly into a cup so that the liquid present in the reservoir does not come into contact with the beverage-making appliance," as recited in claim 27, and similarly recited in claim 28. (Illustrative emphasis provided) Fung does not even have any detachable cartridge with a liquid transport channel for transporting the liquid from the reservoir when unsealed to a

chamber, and a guide to transport a combined flow of the liquid and the steam to the liquid outlet of the detachable cartridge.

Further, as described on column 6, lines 38-51 of Favre, "the liquid product flows directly into the housing 21 of the mounting member which constitutes a small liquid collector chamber (not illustrated) to direct the liquid product into a container, such as a cup or a beaker." (Favre, column 5, lines 58-59; emphasis added) That is, the liquid pouring in the cup comes from the "small liquid collector chamber" of the Favre beverage making device, and not directly from the Favre sealed cartridge 1. This necessitates cleaning of the Favre beverage making device. In contrast, in the present invention as recited in claim 27, and similarly recited in claim 28, since "the liquid outlet of the cartridge outputs the heated liquid directly into a cup so that the liquid present in the reservoir does not come into contact with the beverage-making appliance," there is no need to clean the beverage-making appliance. (Illustrative emphasis provided)

It is alleged on page 7, last four lines of the Final Office Action, that Fung and Favre, like most heated liquid makers, are capable of producing a heated liquid that output directly into a cup." (Emphasis added) This allegation is respectfully traversed. Even assuming, arguendo, that this allegation is true, it is respectfully submitted that whether or not prior art is capable of performing the recitations of the claims is not a proper part of an obviousness analysis. As noted above, instead of having a cartridge with a liquid outlet, where the liquid outlet of the cartridge outputs the heated liquid directly into a cup, any liquid product

flows directly into a housing of the Fung and Favre beverage-making appliance, and does not flow directly into a cup. That is, the liquid product flows from a cartridge into a cup through a housing of a beverage-making appliance derived from the combination of Fung and Favre and not flow from any cartridge directly into cup.

In the Advisory Action, it is alleged that the "limitation "the cartridge outputs the heated liquid directly into a cup" also carries little patentable weight, since the combination of Fung and Favre produces a cartridge capable of meeting the functional requirements of the claim." As argued above, whether or not prior art is capable of performing the recitations of the claims is not a proper part of an obviousness analysis. Further, having a cartridge with a cartridge outlet that "outputs the heated liquid directly into a cup so that the liquid present in the reservoir does not come into contact with the beverage-making appliance," as recited in claims 27 and 28 is not a mere design choice, but rather provides substantial benefits, such as dispensing with the need to clean the beverage-making appliance, and reducing dirt and bacteria build up on the beverage-making appliance, where the used detachable cartridge, which is contaminated by residues of liquid and directly outputs the heated liquid directly into a cup, is discarded, leaving behind a beverage-making appliance which is clean, sanitary, not contaminated by any liquid residues, and ready for the next use and receipt of another such detachable cartridge. Accordingly, it is respectfully requested that claims 27 and 28 be allowed.

Claim 10 is said to be unpatentable over Fung and Favre in view of Gross.

It is respectfully submitted that claim 10 should be allowed at least based on their dependence from independent claim 1.

Claim 13 is said to be unpatentable over Fung and Favre in view of Rizzuto.

It is respectfully submitted that claim 13 should be allowed at least based on their dependence from independent claim 1.

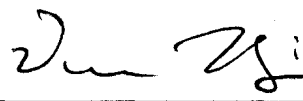
In addition, Appellants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Appellants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

CONCLUSION

Claims 1-2, 4-16 and 19-28 are patentable over Fung, Favre, Gross and Rizzuto.

Thus, the Examiner's rejections of claims 1-2, 4-16 and 19-28 should be reversed.

Respectfully submitted,

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CLAIMS APPENDIX

1.(Previously Presented) A device for preparing a heated liquid using a beverage-making appliance, said device comprising:

a reservoir that sealably holds a liquid in a sealed foil;

a chamber;

a liquid transport channel in communication with the reservoir for transporting the liquid when the reservoir is unsealed to the chamber;

a steam inlet which is connectable to a steam generator of the beverage-making appliance for generating steam and heating the liquid flowing out of the liquid transport channel to form the heated liquid;

a liquid outlet for outputting the heated liquid;

a guide configured to transport a combined flow of at least the liquid and the steam to the liquid outlet; and

a cartridge in which the reservoir, the chamber, the liquid transport channel, the guide, and the liquid outlet are provided, wherein the cartridge is detachably connected to the device beverage-making appliance and the cartridge is disposable after the sealed foil is unsealed.

2.(Previously Presented) The device as claimed in claim 1, wherein the guide

comprises a further chamber, wherein the liquid transport channel discharges into the chamber, and said chamber comprises the steam inlet, and wherein the further chamber is connected to the chamber via a restriction and comprises the liquid outlet.

Claim 3 (Canceled)

4.(Previously Presented) The device as claimed in claim 1, wherein the cartridge is detachably connectable to the appliance via the steam inlet.

5.(Previously Presented) The device as claimed in claim 1, wherein said liquid transport channel comprises an air inlet.

6.(Previously Presented) The device as claimed in claim 5, wherein the air inlet is closable.

7.(Previously Presented) The device as claimed in claim 6, wherein a valve is provided for opening and closing the air inlet.

8.(Previously Presented) The device as claimed in claim 1, wherein the liquid comprises milk.

9.(Previously Presented) The device as claimed in claim 1, wherein the liquid comprises liquid coffee extract.

10.(Previously Presented) The device as claimed in claim 1, wherein the chamber comprises a water inlet which is connectable to a water reservoir.

11.(Previously Presented) The device as claimed in claim 2, wherein at least the further chamber is provided with obstructions for enhancing frothing of liquid in the further chamber during operation.

12.(Previously Presented) The device as claimed in claim 1, wherein the reservoir is a refillable reservoir.

13.(Previously Presented) The device as claimed in claim 12, wherein the reservoir is provided in an element which is moveable between a first position in which the element covers components including the liquid transport channel, the chamber, the steam inlet, the restriction, the further chamber, and the liquid outlet during operation, and a second position in which the element leaves the components exposed for cleaning purposes in a non-operating status.

14.(Previously Presented) The device as claimed in claim 1, wherein the beverage-making appliance comprises a space for receiving the device for preparing the heated liquid.

15.(Previously Presented) The device as claimed in claim 14, wherein the beverage-making comprises the steam generator which is connectable to the steam inlet of the device upon receipt of the device in the space.

16.(Previously Presented) The device as claimed in claim 15, wherein the beverage-making appliance comprises means for opening a liquid flow path between the reservoir and the liquid channel.

Claims 17-18 (Canceled)

19.(Previously Presented) The device of claim 1, the reservoir is unsealed in response to providing the device in beverage-making appliance.

20.(Previously Presented) The device of claim 1, further comprising: an air inlet connectable to an air socket of the beverage-making appliance for providing air to form the

liquid from the reservoir with froth, wherein the air inlet is connected to the liquid transport channel via a first restriction; wherein the chamber is configured to receive the steam from the steam generator of the beverage-making appliance and the liquid from the reservoir including the froth to form the heated liquid with the froth in the chamber and providing the heated liquid with the froth to a further chamber via a second restriction to enhance the froth, wherein the liquid outlet is connected to the further chamber for output of the heated liquid with the froth.

21.(Previously Presented) The device of claim 1, further comprising an air inlet connectable to an air socket of the beverage-making appliance for providing air to form the liquid from the reservoir with froth; wherein the chamber is configured to receive the steam from the steam generator of the beverage-making appliance and the liquid from the reservoir including the froth to form the heated liquid with the froth in the chamber and output the heated liquid with the froth through the liquid outlet of the device.

22.(Previously Presented) A cartridge for preparing a heated liquid using a beverage-making appliance, said cartridge comprising:

- a reservoir that sealably holds a liquid in a sealed foil;
- a compartment;
- a channel between the reservoir and the compartment;

a steam inlet which is connectable to a steam generator of the beverage-making appliance for providing steam into the compartment for heating the liquid provided into the compartment to form the heated liquid; and

a liquid outlet for outputting the heated liquid;

wherein the cartridge is detachable from the beverage-making appliance and the cartridge is disposable after the sealed foil is unsealed.

23.(Previously Presented) The cartridge of claim 22, wherein the reservoir is unsealed in response to providing the device in the beverage-making appliance.

24.(Previously Presented) The cartridge of claim 22, wherein the sealed foil which is pierceable by a protrusion of a cover of the beverage-making appliance when the cover is closed over the cartridge.

25.(Previously Presented) The cartridge of claim 22, wherein the cartridge is a single use cartridge for discarding after a single use of preparing the heated liquid by the beverage-making appliance.

26.(Previously Presented) The cartridge of claim 22, wherein the liquid present in the reservoir does not come into contact with the beverage-making appliance.

27.(Previously Presented) The device of claim 1, wherein the liquid outlet of the cartridge outputs the heated liquid directly into a cup so that the liquid present in the reservoir does not come into contact with the beverage-making appliance.

28.(Previously Presented) The cartridge of claim 22, wherein the liquid outlet outputs the heated liquid directly into a cup so that the liquid present in the reservoir does not come into contact with the beverage-making appliance.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None